

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMISI JERMAINE CALLOWAY,

Plaintiff,

v.

YOUSSEE, *et al.*,

Defendants.

Case No. 1:21-cv-01450-JLT-BAM (PC)

**ORDER PROVIDING DEFENDANT RAO
WITH THE OPPORTUNITY TO SHOW
GOOD CAUSE FOR FAILING TO WAIVE
SERVICE**

(ECF No. 43)

THIRTY (30) DAY DEADLINE

Plaintiff Jamisi Jermaine Calloway (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint against Defendants Y. Rao, Del Pilar, H. Diaz, T. Loar, and H. Smuzynski for deliberate indifference to serious medical needs in violation of the Eighth Amendment when they released Plaintiff from a suicide crisis bed, and against Defendants D. A. Lopez and M. Cuevas for deliberate indifference to serious medical needs in violation of the Eighth Amendment when they failed to intervene during Plaintiff’s two suicide attempts.

On June 21, 2022, the Court directed E-Service on all defendants. (ECF No. 25.) The Marshal was directed to attempt to secure a waiver of service before attempting personal service on a defendant. If a waiver of service was not returned by a defendant within sixty days, the Marshal was directed to effect personal service on the defendant in accordance with the provisions of Federal Rule of Civil Procedure 4 and 28 U.S.C. § 566(c), without prepayment of

1 costs, and to file the return of service with evidence of any attempt to secure a waiver of service
2 and with evidence of all costs subsequently incurred in effecting personal service.

3 On July 29, 2022, the Court received information that Defendant Rao could not be
4 electronically served. On September 19, 2022, the United States Marshal filed a return of service
5 USM-285 form showing charges of \$363.00 for effecting personal service on Defendant Rao.
6 (ECF No. 43.) The form shows that a waiver of service form was mailed to Defendant Rao on
7 August 2, 2022. (*Id.*)

8 Pursuant to the Court's Order, Defendant Rao is required to return the waiver to the
9 United States Marshal and the filing of an answer or a motion does not relieve them of this
10 obligation. Defendant Rao did not return a waiver, which resulted in the execution of personal
11 service on September 16, 2022. (*Id.*)

12 Defendant Rao, together with the other named Defendants, filed an answer on November
13 18, 2022. (ECF No. 47.)

14 Rule 4 provides that "[a]n individual, corporation, or association that is subject to service
15 under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons."
16 Fed. R. Civ. P. 4(d)(1). "If a defendant located within the United States fails, without good cause,
17 to sign and return a waiver requested by a plaintiff located within the United States, the court
18 must impose on the defendant . . . the expenses later incurred in making service. . . ." Fed. R.
19 Civ. P. 4(d)(2)(A).

20 It appears that Defendant Rao was given the opportunity required by Rule 4(d)(1) to
21 waive service, but failed to return the waiver to the United States Marshal, although Defendant
22 Rao did make an appearance in the action. The Court shall provide Defendant Rao with the
23 opportunity to show good cause for failing to waive service. If Defendant Rao either fails to
24 respond to this order or responds but fails to show good cause, the costs incurred in effecting
25 service shall be imposed.

26 Accordingly, it is HEREBY ORDERED that:

27 1. Defendant Rao may, within **thirty (30) days** from the date of service of this order, **either**:

28 a. Show good cause in writing for failing to waive service; **or**

b. Reimburse the **\$363.00** in costs incurred in effecting personal service by sending payment to the United States Marshals Service at 501 I Street, Suite 5600, Sacramento, California 95814, with the case number for this action clearly indicated; and

2. If Defendant Rao fails to respond to this order or responds but fails to show good cause, the Court shall impose the costs incurred in effecting service.

IT IS SO ORDERED.

Dated: November 18, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE